IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 18990 of 2007(I)

PETITIONER:

SUHARA, W/O ABDUKKUNJU,
PUTHANPURAYIL HOUSE, EDAYAPPURAM,
ERUMATHALA KARA, ALUVA EAST VILLAGE, ALUVA.

BY ADV. SRI.P.K.NISHAD (PUZHITHARA)
SRI.NAVEEN THOMAS

RESPONDENTS:

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1. THE STATE BANK OF TRAVANCORE,
REP. BY ITS CHIEF MANAGER/MANAGER,
P.B.NO.3, CATHOLIC CENTRE, RAILWAY STATION ROAD,
ALUVA-1.

2. THE MANAGER, STATE BANK OF TRAVANCORE,
ZONAL OFFICE, P.B.NO.3624, PANAMPILLY NAGAR,
ERNAKULAM, PIN-682036.

3. ABDUL ASEEZ, S/O ABDUL RAHIMAN @ ANDRU,
PERUMPILLY HOUSE, NORTH VAZHAKKULAM KARA,
MARAMBILLY P.O., MARAMBILLY VILLAGE,
KUNNATHUNADU TALUK.

4. MUJEEB RAHMAN, S/O ABDUL RAHIMAN @ ANDRU
PERUMPILLY HOUSE, NORTH VAZHAKKULAM KARA,
MARAMBILLY P.O., MARAMBILLY VILLAGE,
KUNNATHUNADU TALUK.

5. SAFOORA, W/O KUNJUMUHAMMAD,
PERUMPILLY HOUSE, EDAYAPPURAM,
ERUMATHALA KARA, ALUVA EAST VILLAGE, ALUVA.

6. KUNJUMUHAMMAD, S/O ABDUL RAHIMAN @ ANDRU
PERUMPILLY HOUSE, EDAYAPPURAM,
ERUMATHALA KARA, ALUVA EAST VILLAGE, ALUVA.

BY SRI.M. PATHROSE MATHAI (SR), SC
SRI. SAJI VARGHESE SC FOR SBT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.18990 of 2007 (I)

Dated this the 22nd June, 2007.

JUDGMENT

The petitioner, by Ext.P1 sale deed, purchased a property from respondents 3 and 4. The said respondents got the property from the 5th respondent. She got the property from the 6th respondent, her husband. The 6th respondent, depositing the original title deed, had availed a loan from the first respondent Bank. The loan is in default. So, the Bank has taken steps to proceed against the property of the petitioner also, under Ext.P1. On coming to know of the alleged fraud played by the party respondents, the petitioner submits, she has already moved the competent civil and criminal courts, for appropriate reliefs against them. When recovery steps were taken, the petitioner offered to pay the amount due to the Bank, provided the original title deed, deposited by the 6th respondent, is released to her. But, when the Bank contacted the 6th respondent, he did not agree for the release of the document to the petitioner. In the above background, this writ petition is filed, seeking the following reliefs:

"a) issue a writ of mandamus, appropriate writ, order or direction, directing the 1st respondent Bank, not to initiate any proceedings pursuant to Exts.P4 & P6 for the enforcement of security interest created on the property covered by Exhibit P1 and to accept the offer of settlement extended by the petitioner as per Ext.P5 & P7 requests;

b) issue a writ of mandamus, appropriate writ, order or direction, directing the 1st respondent Bank to accept petitioner's offer of settlement, disregarding the frivolous objection put forward by the 6th respondent;

c) issue a writ of mandamus, appropriate writ, order or direction, directing the 1st respondent to resort to Section 88 read with Order XXXV of the Code of Civil Procedure by filing an interpleader-suit, in the matter of delivery of Sale Deed No.2751 of 2004 of the Sub Registrar's Office, Sreemoolanagaram, in case it is felt that the delivery of the said deed to any person other than the 6th respondent will trouble its credibility;

d) pass such other order or direction as deem fit to the facts and circumstances of the case."

2. As long as the 6th respondent, the loanee, is in default, the Bank is entitled to proceed against the

property. Therefore, I find nothing illegal in the steps taken by the Bank in this regard. This Court cannot interdict the Bank from taking further action for recovery of the loan amount. Having regard to the facts of this case, the forum of this Court, under Article 226 of the Constitution of India, is inappropriate to redress the grievances, of the petitioner. Her remedy lies elsewhere. The petitioner can always move the Bank and try for a settlement with the Bank, so that she can redeem her property. Without prejudice to the said right of the petitioner, this writ petition is dismissed.

I make it clear that I have not expressed any opinion on the merits of the case and my observations in the judgment shall not be treated as the findings entered by this Court on the contentions of the petitioner, or of the Bank or of the party respondents. All the contentions of both sides are kept open.

K. BALAKRISHNAN NAIR,
JUDGE.

vav.